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8 City of Huntington Beach

9 UNITED STATES DISTRICT COURT
10 CENTRAL DISTRICT OF CALIFORNIA
11

12 NEW CINGULAR WIRELESS PCS,
13 LLC, D/B/A AT&T MOBILITY, a
14 Delaware limited liability company,
15 Plaintiff,

16 vs.
17

18 CITY OF HUNTINGTON BEACH,
19 CALIFORNIA.
20 Defendant.

Case No.: 8:23-cv-01972-FWS (JDEx)

**ANSWER TO FIRST AMENDED
COMPLAINT BY DEFENDANT
CITY OF HUNTINGTON BEACH**

21
22 Defendant City of Huntington Beach (hereinafter “Defendant”), hereby
23 answers Plaintiff New Cingular Wireless PCS First Amended Complaint, for itself,
24 and for no other defendant, as follows:

- 25 1. Answering Paragraph 1, Defendant admits the allegations contained
26 therein.
27 2. Answering Paragraph 2, Defendant admits the allegations contained
28 therein.

1 3. Answering Paragraph 3, Defendant admits the allegations contained
2 therein.

3 4. Answering Paragraph 4, Defendant denies the allegation that the
4 Proposed Facility is the least intrusive means to close AT&T's alleged coverage
5 gap. As to the remainder of the allegations, Defendant lacks sufficient information
6 to form a belief about the truth of the allegations, and on that basis, denies those
7 allegations.

8 5. Answering Paragraph 5, Defendant lacks sufficient information to form
9 a belief about the truth of the allegations, and on that basis, denies those allegations.

10 6. Answering Paragraph 6, Defendant admits the allegations contained
11 therein.

12 7. Answering Paragraph 7, to the extent that the paragraph sets forth any
13 factual allegations rather than blanket statements of law, Defendant denies the
14 allegations contained therein.

15 8. Answering Paragraph 8, Defendant denies the allegations contained
16 therein.

17 9. Answering Paragraph 9, Defendant lacks sufficient information to form
18 a belief about the truth of the allegations, and on that basis, denies those allegations.

19 10. Answering Paragraph 10, Defendant denies the allegations contained
20 therein. Rather, Defendant admits that the City of Huntington Beach is a Municipal
21 Corporation and Charter City organized and existing under a freeholder's charter
22 with plenary powers over its municipal affairs, including and without limitation,
23 local zoning and land use matters, as authorized by Article XI, Section 5 of the
24 California Constitution.

25 11. Answering Paragraph 11, Defendant admits that AT&T appears to seek
26 declaratory and injunctive relief. However, Defendant denies that AT&T is entitled
27 to any relief, whatsoever, under the law.
28

1 12. Answering Paragraph 12, Defendant denies the allegations contained
2 therein.

3 13. Answering Paragraph 13, Defendant will neither admit nor deny as the
4 identified paragraph is not a factual allegation, but rather a proposed statement of
5 law.

6 14. Answering Paragraph 14, Defendant will neither admit nor deny as the
7 identified paragraph is not a factual allegation, but rather a proposed statement of
8 law.

9 15. Answering Paragraph 15, Defendant will neither admit nor deny as the
10 identified paragraph is not a factual allegation, but rather a proposed statement of
11 law.

12 16. Answering Paragraph 16, Defendant will neither admit nor deny as the
13 identified paragraph is not a factual allegation, but rather a proposed statement of
14 law.

15 17. Answering Paragraph 17, Defendant will neither admit nor deny as the
16 identified paragraph is not a factual allegation, but rather a proposed statement of
17 law.

18 18. Answering Paragraph 18, Defendant will neither admit nor deny as the
19 identified paragraph is not a factual allegation, but rather a proposed statement of
20 law.

21 19. Answering Paragraph 19, Defendant will neither admit nor deny as the
22 identified paragraph is not a factual allegation, but rather a proposed statement of
23 law.

24 20. Answering Paragraph 20, Defendant will neither admit nor deny as the
25 identified paragraph is not a factual allegation, but rather a proposed statement of
26 law.
27
28

1 21. Answering Paragraph 21, Defendant will neither admit nor deny as the
2 identified paragraph is not a factual allegation, but rather a proposed statement of
3 law.

4 22. Answering Paragraph 22, Defendant lacks sufficient information to
5 form a belief about the truth of the allegations, and on that basis, denies those
6 allegations.

7 23. Answering Paragraph 23, Defendant lacks sufficient information to
8 form a belief about the truth of the allegations, and on that basis, denies those
9 allegations.

10 24. Answering Paragraph 24, Defendant lacks sufficient information to
11 form a belief about the truth of the allegations, and on that basis, denies those
12 allegations.

13 25. Answering Paragraph 25, Defendant lacks sufficient information to
14 form a belief about the truth of the allegations, and on that basis, denies those
15 allegations.

16 26. Answering Paragraph 26, Defendant lacks sufficient information to
17 form a belief about the truth of the allegations, and on that basis, denies those
18 allegations.

19 27. Answering Paragraph 27, Defendant lacks sufficient information to
20 form a belief about the truth of the allegations, and on that basis, denies those
21 allegations.

22 28. Answering Paragraph 28, Defendant lacks sufficient information to
23 form a belief about the truth of the allegations, and on that basis, denies those
24 allegations.

25 29. Answering Paragraph 29, Defendant admits the allegation that AT&T
26 proposed to install a wireless communications facility in the parking lot of a church
27 located within a commercial zone within the City of Huntington Beach. However,
28 Defendant denies the allegation that AT&T presented sufficient evidence showing

1 that there was a significant wireless service coverage gap in providing vital services
2 near this area, and further denies the allegation that the Proposed Facility was
3 “stealth.”

4 30. Answering Paragraph 30, Defendant lacks sufficient information to
5 form a belief as to manner, method, and extent of which AT&T “thoroughly”
6 investigated alternative sites and designs, and on that basis, denies those allegations.
7 Defendant admits the remainder of the allegations contained therein.

8 31. Answering Paragraph 31, Defendant will neither admit nor deny as the
9 identified paragraph is not a factual allegation, but rather a proposed statement of
10 law.

11 32. Answering Paragraph 32, Defendant lacks sufficient information to
12 form a belief as to manner, method, and extent of which AT&T searched for viable
13 collocation opportunities in the gap area, and on that basis, denies those allegations.

14 33. Answering Paragraph 33, Defendant admits the allegation that AT&T’s
15 site analysis showed that it considered 12 candidate locations, including the Site,
16 and eleven alternative locations. However, Defendant denies the allegation that the
17 Site was the only feasible alternative for the Proposed Facility, and further denies
18 the allegation that the Site was the only opportunity to close AT&T’s alleged
19 coverage gap.

20 34. Answering Paragraph 34, Defendant lacks sufficient information to
21 form a belief that the two alternative sites were “unavailable” due to the property
22 owner’s failure to respond to “multiple overtures” made by AT&T in April and May
23 of 2022, and on that basis, denies those allegations. Defendant admits the remainder
24 of the allegations contained therein.

25 35. Answering Paragraph 35, Defendant admits the allegations contained
26 therein.

27 36. Answering Paragraph 36, Defendant admits the allegations contained
28 therein.

1 37. Answering Paragraph 37, Defendant admits the allegations contained
2 therein.

3 38. Answering Paragraph 38, Defendant admits the allegations contained
4 therein.

5 39. Answering Paragraph 39, Defendant denies the allegation that the
6 Proposed Facility was the only viable site available to close AT&T's alleged
7 coverage gap. Defendant admits the remainder of the allegations contained therein.

8 40. Answering Paragraph 40, Defendant admits the allegations contained
9 therein.

10 41. Answering Paragraph 41, Defendant admits the allegations contained
11 therein.

12 42. Answering Paragraph 42, Defendant denies the allegation that the
13 Proposed Facility was the least intrusive means to close the alleged coverage gap.
14 Defendant admits the remainder of the allegations.

15 43. Answering Paragraph 43, Defendant admits the allegations contained
16 therein.

17 44. Answering Paragraph 44, Defendant lacks sufficient information to
18 form a belief as to date in which AT&T's representatives reviewed the City's
19 written denial of its application, and on that basis, denies those allegations.
20 However, Defendant admits the allegation that notice of the denial was issued on or
21 around July 26, 2023.

22 45. Answering Paragraph 45, Defendant admits the allegations contained
23 therein.

24 46. Answering Paragraph 46, Defendant denies the allegations contained
25 therein.

26 47. Answering Paragraph 47, Defendant denies the allegations contained
27 therein.

28

1 48. Answering Paragraph 48, Defendant admits the allegation that it
2 proposed a minimum of three alternative sites for construction of the proposed
3 facility. However, Defendants denies the allegation that it did not evaluate the
4 availability or feasibility of those sites.

5 49. Answering Paragraph 49, Defendant denies the allegation that the
6 proposed sites located at 17191 and 17262 Beach Boulevard were “unavailable” and
7 that AT&T exercised due diligence in its attempt, if any, to secure the availability of
8 these sites. Defendant admits the allegation that these two proposed sites were
9 identified in AT&T’s Application.

10 50. Answering Paragraph 50, Defendant admits the allegation that the
11 property located at 17373-17479 Beach Boulevard was proposed as an alternate site.
12 However, Defendant denies the allegation that AT&T exercised diligence and
13 further denies the allegation that AT&T relied upon any credible evidence showing
14 insufficient space for the Proposed Facility at this particular site.

15 51. Answering Paragraph 51, Defendant admits the allegations contained
16 therein.

17 52. Answering Paragraph 52, Defendant lacks sufficient information to
18 form a belief as to whether AT&T made a good faith and reasonable attempt to
19 secure a lease from the property owner at 17191 Beach Boulevard, and on that basis,
20 denies the allegations contained therein.

21 53. Answering Paragraph 53, Defendant lacks sufficient information to
22 form a belief as to whether AT&T made a good faith and reasonable attempt to
23 secure a lease from the property owner at 17262 Beach Boulevard, and on that basis,
24 denies the allegations contained therein.

25 54. Answering Paragraph 54, Defendant lacks sufficient information to
26 form a belief as to whether AT&T made a good faith and reasonable attempt to
27 secure a lease from the property owner at 17473-17479 Beach Boulevard, and/or
28

1 that there was insufficient space available at this location, and on that basis, denies
2 the allegations contained therein.

3 55. Answering Paragraph 55, Defendant denies the allegations contained
4 therein.

5 56. Answering Paragraph 56, Defendant denies the allegations contained
6 therein.

7 57. Answering Paragraph 57, Defendant denies the allegations contained
8 therein.

9 58. Answering Paragraph 58, Defendant admits the findings of the
10 Planning Commission Staff Report are as alleged therein. However, Defendant
11 denies those findings as fact, and further denies any insinuation that the Planning
12 Commission Staff Report represents the City and/or City Council's official findings
13 and basis for its denial of AT&T's Application.

14 59. Answering Paragraph 59, Defendant denies the allegations contained
15 therein.

16 60. Answering Paragraph 60, Defendant denies the allegations contained
17 therein.

18 61. Answering Paragraph 61, Defendant denies the allegations contained
19 therein.

20 62. Answering Paragraph 62, Defendant denies the allegations contained
21 therein.

22 63. Answering Paragraph 63, due to the vague and ambiguous description
23 of the properties identified, Defendant lacks sufficient information to form a belief
24 as to the truth of the allegations, and on that basis the denies the allegations
25 contained therein. In addition, Defendant denies the allegations insofar as they
26 attempt to show the properties identified are substantially similar to the Proposed
27 Facility and Site.

1 64. Answering Paragraph 64, Defendant denies the allegations contained
2 therein.

3 65. Answering Paragraph 65, Defendant denies the allegations contained
4 therein.

5 66. Answering Paragraph 66, Defendant incorporates all prior admissions
6 and denials in Answer to Paragraphs 1 through 65.

7 67. Answering Paragraph 67, Defendant lacks sufficient information to
8 form a belief as to whether AT&T has a “gap in service coverage” in the vicinity of
9 the Proposed Facility and/or whether the alleged “gap in service coverage” was
10 significant, and on that basis denies the allegations contained therein.

11 68. Answering Paragraph 68, Defendant lacks sufficient information to
12 form a belief as to whether AT&T has a “gap in service coverage” in the vicinity of
13 the Proposed Facility and/or whether the alleged “gap in service coverage” was
14 significant, and on that basis denies the allegations contained therein.

15 69. Answering Paragraph 69, Defendant denies the allegations contained
16 therein.

17 70. Answering Paragraph 70, Defendant admits that AT&T provided the
18 City with “a reason” why it chose the Site. However, Defendant denies that AT&T
19 was diligent or reasonable in its analysis of alternate sites, and further denies that
20 there were not any alternate and less intrusive sites available for the Proposed
21 Facility.

22 71. Answering Paragraph 71, Defendant denies the allegations contained
23 therein.

24 72. Answering Paragraph 72, Defendant denies the allegations contained
25 therein.

26 73. Answering Paragraph 73, Defendant denies the allegations contained
27 therein.

28

1 74. Answering Paragraph 74, Defendant denies the allegation that the City
2 has any cognizable legal duty or burden to show that AT&T did not have a
3 significant gap in personal wireless service prior to issuing the Denial.

4 75. Answering Paragraph 75, Defendant denies the allegations contained
5 therein.

6 76. Answering Paragraph 76, Defendant denies the allegations contained
7 therein.

8 77. Answering Paragraph 77, Defendant denies the allegations contained
9 therein.

10 78. Answering Paragraph 76, Defendant denies the allegations contained
11 therein.

12 79. Answering Paragraph 79, Defendant incorporates all prior admissions
13 and denials in Answer to Paragraphs 1 through 78.

14 80. Answering Paragraph 80, Defendant denies the allegations contained
15 therein.

16 81. Answering Paragraph 81, Defendant admits that AT&T presented some
17 evidence of its alleged need to construct the Proposed Facility, and that construction
18 of such a facility would require a conditional use permit. However, Defendant
19 denies any allegation that the evidence submitted by AT&T was sufficient to justify
20 the construction of the Proposed Facility at the Site.

21 82. Answering Paragraph 82, Defendant denies the allegations contained
22 therein.

23 83. Answering Paragraph 83, Defendant denies the allegations contained
24 therein.

25 84. Answering Paragraph 84, Defendant denies the allegations contained
26 therein.

27 85. Answering Paragraph 85, Defendant incorporates all prior admissions
28 and denials in Answer to Paragraphs 1 through 84.

1 86. Answering Paragraph 86, Defendant will neither admit nor deny as the
2 identified paragraph is not a factual allegation, but rather a statement of law.

3 87. Answering Paragraph 87, Defendant denies the allegations contained
4 therein.

5 88. Answering Paragraph 88, Defendant denies the allegations contained
6 therein.

7 89. Answering Paragraph 89, Defendant denies the allegations contained
8 therein.

9 90. Answering Paragraph 90, Defendant incorporates all prior admissions
10 and denials in Answer to Paragraphs 1 through 89.

11 91. Answering Paragraph 91, Defendant will neither admit nor deny as the
12 identified paragraph is not a factual allegation, but rather a proposed statement of
13 law.

14 92. Answering Paragraph 92, Defendant denies the allegations contained
15 therein.

16 **FIRST AFFIRMATIVE DEFENSE**

17 The First Amended Complaint fails to state a claim upon which relief can be
18 granted.

19 **SECOND AFFIRMATIVE DEFENSE**

20 Defendant is a Municipal Corporation and Charter City organized and
21 existing under a freeholder's charter with plenary powers over its municipal affairs,
22 including and without limitation, local zoning and land use matters, as authorized by
23 Article XI, Section 5 of the California Constitution.

24 **THIRD AFFIRMATIVE DEFENSE**

25 The Telecommunications Act (47 U.S.C. § 332(c)(7)(A)) does not prevent
26 municipalities from exercising their traditional prerogative to restrict and control
27 development based on aesthetic considerations, nor does the Act preempt state or
28 local government entity's conduct that does not amount to regulation. *Southwestern*

1 *Bell Mobile Sys. v. Todd* (1st Cir. 2011) 244 F.3d 51; *Sprint Spectrum v. L.P. v. Mills*
 2 (2nd Cir. 2022) 283 F.3d 404.

3 **FOURTH AFFIRMATIVE DEFENSE**

4 Pursuant to 47 U.S.C. § 332, Defendant's decision to deny a request to place,
 5 construct, or modify personal wireless service facilities, if any, is supported by
 6 substantial evidence.

7 **FIFTH AFFIRMATIVE DEFENSE**

8 Plaintiff's failure to consider feasible and less intrusive alternatives serve as a
 9 bar to its claim for relief.

10 **SIXTH AFFIRMATIVE DEFENSE**

11 The alleged actions of Defendant as identified in the First Amended
 12 Complaint were required and/or justified by controlling law.

13 **SEVENTH AFFIRMATIVE DEFENSE**

14 Plaintiff failed to act in good faith and/or exercise reasonable diligence at all
 15 relevant times identified in the First Amended Complaint.

16
 17 WHEREFORE, Defendant prays that Plaintiff take nothing by way of its First
 18 Amended Complaint and that this Defendant herein recover their costs and such
 19 other and further relief as the Court may deem just and proper.

20
 21 DATED: December 4, 2023

MICHAEL E. GATES, City Attorney

22
 23 By: /s/ Ryan E. Lumm
 24 RYAN LUMM, Sr. Deputy City Attorney
 25 Attorney for Defendant
 26 CITY OF HUNTINGTON BEACH
 27
 28

DEMAND FOR JURY TRIAL

TO THE CLERK OF THE ABOVE-ENTITLED COURT:

PLEASE TAKE NOTICE that Defendant CITY OF HUNTINGTON BEACH demands trial by jury in the above-entitled action pursuant to Federal Rules of Civil Procedure 38(b) and Local Rule 38-1.

DATED: December 4, 2023

MICHAEL E. GATES, City Attorney

By: /s/ Ryan E. Lumm
RYAN LUMM, Sr. Deputy City Attorney
Attorney for Defendants
CITY OF HUNTINGTON BEACH

PROOF OF SERVICE OF PAPERS

I am employed in the County of Orange, State of California. I am over the age of 18 and not a party to the within action; my business address is 2000 Main Street, Huntington Beach, CA 92648.

On December 4, 2023, I served the foregoing document(s) described as: **ANSWER TO FIRST AMENDED COMPLAINT BY DEFENDANT CITY OF HUNTINGTON BEACH** on the interested parties in this action by placing a true copy thereof in a sealed envelope addressed as follows:

Raymond P. Bolanos, Esq.
AT&T SERVICES, INC., LEGAL DEP'T
430 Bush Street, 6th Floor
San Francisco, CA 94108

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New Cingular Wireless PCS, LLC
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Pro Hac Vice Attorney for Plaintiff
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a. ☒ BY MAIL -- The envelope was sealed and placed for collection on the date listed above. I am readily familiar with the business practice at my place of business for collection and processing of correspondence for mailing with the United States Postal Service. Correspondence so collected and processed is deposited with the United States Postal Service that same day in the ordinary course of business.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on December 4, 2023, in Huntington Beach, California.

MICHELE HOFFMAN